S.B. CIVIL SECOND APPEAL NO.260/2003

Om Prakash vs. Bhanwar Lal.

Date : 27.7.2005

HON'BLE MR. PRAKASH TATIA, J.

Mr. Suresh Srimali, for the appellant.

Mr. JK Bhaiya, for the respondent/caveator.

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Heard learned counsel for the parties.

The respondent/plaintiff/landlord filed a suit for eviction against the appellant/defendant/tenant on the ground of defendant's committing second default in payment of rent which is ground of eviction under the provisions of Rajasthan Premises (Control of Rent and Eviction) Act, 1950.

The trial court dismissed the suit of the plaintiff holding that in view of the documentary evidence produced by the defendant namely, account books, the defendant successfully proved that he paid the rent and, therefore, he has not committed any default in payment of rent. Against the judgment and decree of the trial court dated 7.12.2000, the plaintiff preferred an appeal before the first appellate court. The first appellate court, after considering the account books placed on record by the defendant, reached to the conclusion that the defendant failed to prove that the rent was increased from Rs.90/- to Rs.160/- and, therefore, the appellate court rejected the

documentary evidence produced by the appellant and there was no other evidence for payment of rent, therefore, decreed the suit of the plaintiff after reversing the judgment and decree of the trial court. Hence, this second appeal.

According to learned counsel for the appellant, the first appellate court committed serious error of law as it did not refer Section 34 of the Evidence Act which was referred and considered by the trial court and the trial court after holding that the account books produced by the defendant/appellant can be considered as evidence decided the suit. Learned counsel for the appellant relied upon the judgment of this Court delivered in the case of Nand Kishore vs. Indira Bai reported in RLW 1988(1) 288. In that case, the only question for consideration was whether the plaintiff has proved the entries made in his account books in accordance with law so as to fasten the liability upon the defendant. In the above judgment, this Court held that Section 34 of the Evidence Act does not require any particular form of corroborative evidence. It was further held that the plaintiff's own statement on oath in support of the entries made in his account books would be sufficient to fix the defendant with liability. Therefore, according to learned counsel for the appellant/tenant, since the appellant produced his account books and they are admissible in evidence under Section 34 of the Evidence Act and the defendant gave his statement and proved the entries and which proved the payment of rent by the defendant to

the landlord, therefore, the first appellate court committed serious illegality and that illegality can be cured in second appeal.

I have considered the submissions of learned counsel for the appellant and perused the reasons given by the two courts below.

It appears that the reasons given by the trial court virtually proceeded on assumption that since there are entries in the account books of the defendant and there is statement of the defendant on oath, the Court should have declared that the rent of the premises is Rs.160/- per month and all the rent has been paid by the defendant to the plaintiff landlord. The trial court appears to have proceeded on assumption that in case, the documents are relevant and admissible in evidence under Section 34 of the Evidence Act, then mere statement on oath of the account book holder, the facts mentioned in the account books stand proved and ignored that the defendant failed to prove that the rent was increased from Rs.90/- to Rs.160/- which was the fact in issue. Unless it is proved that the rent of the premises was Rs.160/-, mere entries in the defendant's own account book about payment of any amount @ Rs.160/- per month cannot prove such payment as payment against rent. The scope of Section 34 is limited to the purpose for which it has been enacted. It only makes the account books relevant piece of evidence and because of this reason, they can be admitted in evidence despite the fact that they may

not bear the signature of the person who may be affected. The credibility of account books should not be confused because of Section 34 of the Evidence Act.

This Court in Nand Kishore's case (supra) itself clearly observed that “Section 34 of the Evidence Act does not require any particular form of corroborative evidence.” The form of corroborative evidence may be different but the evidence is required to prove the entries in the account books and in some cases even the statement of the plaintiff may be sufficient provided the Court finds that the statements of the plaintiff are trustworthy and there are reasons to believe that the account books are maintained in accordance with the set procedure of maintaining account books.

In Nand Kishore's case (supra), this court very carefully looked into the evidence of the parties also and observed that “It is pertinent to be noted that on behalf of the defendant, cross-examination was made with the plaintiff practically with respect to all major items of entries and the plaintiff has given complete details of the transactions.” That was the reason for accepting the entries in the account books as proved.

Here in this case, the appellate court observed that the defendant, without proving the fact that the rent of the premises was increased from Rs.90/- per month to Rs.160/- per month, merely produced the books of entries containing the periodical increase of rent of the suit

premises and that was not the case of even of the plaintiff that rent was increased to Rs.160/- per month. If the rent of the premises was increased to Rs.160/-, then the plaintiff could have filed the suit on the basis of rent at the rate of Rs.160/- per month and that would have been more probable and there was no reason for the plaintiff to file the suit on the reduced rent when he was receiving rent @ Rs.160/- per month. The unusual behaviour of the plaintiff can only be extended for increase of rent from Rs.90/- to Rs.160/- but there is no reason to believe that the landlord has filed the suit for arears of rent on the basis of rent which was not last paid rent but low rent.

According to learned counsel for the appellant, the plaintiff in his statement admitted that he was not keeping the accounts for rent whereas the defendant produced account books, therefore, the account books should have been given preference against the person who was not keeping the books. This contention is devoid of any force because of the simple reason that it was not necessary for all to keep the accounts and if the defendant came with a case that he was keeping the accounts books than it is for him to prove the fact by evidence and for that purpose, he used the account books as evidence which was discarded by the appellate court.

Apart from the above discussion, this Court under Section 100 CPC cannot interfere in the finding of fact recorded by the first appellate court after considering the

evidence on the ground that there is possibility of the other view if the evidence is re-considered.

In view of the above discussion, no substantial question of law is involved in this appeal. Accordingly, this appeal, having no merit, is hereby dismissed.

At this stage, learned counsel for the appellant prayed that he may be given some time to evict the suit property.

Looking to the facts of the case, it is ordered that in case, the appellant furnishes a written undertaking before the trial court within a period of four weeks that he shall hand over the vacant possession of the suit premises to the landlord by or before 31.7.2006 and shall pay all the arrears of rent and decreetal amount, if due, within a period of two months from today and shall not part with possession of the property and shall not sublet the property, the decree under challenge shall not be executed till 1.8.2006. The appellant shall also deposit the rent month by month by 15th day of each succeeding month of his tenancy in the trial court. In case of non-compliance of the order or default in payment of rent mentioned above, the decree shall become executable forthwith.

(PRAKASH TATIA), J.

S.Phophaliya